

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

Philips Medical Capital, LLC, a  
Delaware limited liability company,

No. C-06- 4470 JSW (WDB)

Plaintiff,

v.

Medical Insights Diagnostics  
Centers, Inc., a California  
corporation, et al.,

Defendants.

**REPORT AND  
RECOMMENDATION RE SETTING  
UNDERTAKING FOR WRIT OF  
POSSESSION**

\_\_\_\_\_/  
and related cross action  
\_\_\_\_\_/

On October 11, 2006, we issued our Report and Recommendation re Applications for Writs of Attachment and Writ of Possession. On January 26, 2007, the District Court adopted that Report and Recommendation in its entirety. Right to Attach Order and Order for Issuance of Writ of Attachment; Order Granting Writ of Possession and Staying Redelivery, filed January 26, 2007 (“Right to Attach Order”). The Court ruled that plaintiff is entitled to a writ of possession to obtain possession of the MRI equipment that is the subject of the parties’ contract. However, the District Court’s Order permitted defendants to keep possession of the MRI equipment if, by February 6, 2007, defendants posted an undertaking in the amount \$375,000.00. Right to Attach Order, at 13. In the

1 event defendants failed to post the requisite undertaking, the Court authorized  
 2 plaintiff to promptly move the Court for a determination about plaintiff's  
 3 obligation, if any, to file an undertaking in order to obtain issuance of a writ of  
 4 possession.

5 Defendants have not posted an undertaking. Accordingly, on February 9,  
 6 2007, plaintiff filed its Motion for Determination of the Amount of Plaintiff's  
 7 Undertaking Required Pursuant to CCP §515.010 ("Motion"). On February 12,  
 8 2007, Judge White referred plaintiff's Motion to the undersigned. In its Motion,  
 9 plaintiff asks the Court to waive the requirement that plaintiff file an undertaking.  
 10 On February 28, 2007, defendants filed their Opposition to plaintiff's request.

11 On March 14, 2007, this court conducted a hearing in connection with  
 12 plaintiff's Motion.

13 On March 20, 2007, defendants filed their Withdrawal of Defendants'  
 14 Opposition to Motion for Determination of the Amount of Plaintiff's Undertaking.  
 15 Defendants no longer oppose plaintiff's request that the Court waive the  
 16 requirement that it file an undertaking.

17 Accordingly, the court makes the following REPORT AND  
 18 RECOMMENDATION.

19  
 20 **I. Plaintiff's Undertaking**

21 Section 515.010 of the California Code of Civil Procedure provides:

22 (a) Except as provided in subdivision (b), the court shall not issue . . .  
 23 a writ of possession until the plaintiff has filed an undertaking with  
 24 the court. The undertaking shall provide that the sureties are bound to  
 25 the defendant for the return of the property to the defendant, if return  
 26 of the property is ordered, and for the payment to the defendant of any  
 27 sum recovered against the plaintiff. The undertaking shall be in an  
 28 amount not less than twice the value of the defendant's interest in the  
 property or in a greater amount. The value of the defendant's interest  
 in the property is determined by the market value of the property less  
 the amount due and owing on any conditional sales contract or  
 security agreement and all liens and encumbrances on the property,

1 and any other factors necessary to determine the defendant's interest  
2 in the property.

3 (b) If the court finds that the defendant has no interest in the property,  
4 the court shall waive the requirement of the plaintiff's undertaking  
5 and shall include in the order for the issuance of the writ the amount  
6 of the defendant's undertaking sufficient to satisfy the requirements of  
7 subdivision (b) of Section 515.020.

8 Plaintiff contends that the value of 'defendants' interest in the property'  
9 refers essentially to defendants' equity interest in the MRI equipment. In our  
10 October 11th Report and Recommendation we recommended that the District  
11 Court find that plaintiff had proffered evidence that would support a finding that  
12 the current ("forced sale") market value of the property is \$375,000.00. Plaintiff  
13 also proffered evidence that defendants owe more than \$2.8 million under the  
14 parties' contract. Declaration of Ray Crouse, at ¶23. Because defendants appear to  
15 owe plaintiff more than the value of the MRI equipment, the evidence supports a  
16 finding that defendants have no equity in the equipment. Plaintiff, therefore, asks  
17 us to waive the undertaking requirement pursuant to Cal. C.C.P. §515.010(b).

18 Defendants now do not oppose this request. Because the request is  
19 unopposed and because the evidence supports a finding that defendants have no  
20 interest in the MRI equipment, we RECOMMEND that the District Court WAIVE  
21 the requirement that plaintiff file an undertaking to obtain a writ of possession in  
22 accordance with Cal. Code Civ. Proc. §515.010(b).

## 23 **II. Defendants' Undertaking**

24 Section 515.010(b) directs the Court to "include in the order for the issuance  
25 of the writ the amount of the defendant's undertaking sufficient to satisfy the  
26 requirements of subdivision (b) of Section 515.020." For the reasons stated in the  
27 October 11th Report and Recommendation, we RECOMMEND that the District  
28 Court find that the amount of defendants' undertaking necessary to regain  
possession of the property should remain \$375,000.00.

**CONCLUSION**

We RECOMMEND that the District Court find that (1) the Clerk of the Court should promptly issue the writ of possession for the MRI equipment, (2) plaintiff's requirement to file an undertaking is waived, and (3) defendants may file an undertaking in the amount \$375,000.00 in order to keep or regain possession of the MRI equipment.

IT IS SO REPORTED AND RECOMMENDED.

Dated: March 21, 2007

  
\_\_\_\_\_  
WAYNE D. BRAZIL  
United States Magistrate Judge

Copies to:  
parties,  
JSW, wdb, stats